



Customer  
Service

# Building and Development Certifiers Act 2018

CPD Training for Certifiers

May 2020

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# Background to changes

- The BADC Act is part of the Government's response to the independent review of the Building Professionals Act.
- The Government agreed to rewrite the legislation which regulates certifiers to improve administration and promote public confidence in certifiers and certification work.
- The original Bill was passed by Parliament in 2018 and the Regulation was gazetted in March 2020
- The legislation commences on 1 July 2020 and is available at: [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)

# Key themes

- The changes in the BADC legislation fall into a number of key themes:
  - Improvements to registration
  - Changes to assist with insurance availability
  - Changes to compliance obligations
  - Improved enforcement mechanisms
  - Arrangements for accredited practitioners (fire safety)

## Broader scope – definition of 'certification work'

- The definition of 'certification work' and conduct regulated under the BADC Act has been broadened to consider the breadth of responsibilities imposed on certifiers.
- It goes beyond determining applications for development certificates, carrying out the functions of a principal certifier and carrying out inspections.
- It now broadly covers statutory functions of a registered certifier under the certification legislation or 'under another Act or law'. This covers the standards in the statutory Code of Conduct. It also now includes supervision responsibilities (clause 11 of Code).

# Definition of 'certification work'

- The definition of 'certification work' is referenced in relation to things such as:
  - The definition of 'equivalent authorisation' and 'relevant offence'
  - Requirement for registration, including offence for false representations regarding registration (s5)
  - Suitability for registration (s7, cl 5)
  - Compliance with standards or methodologies (s14)
  - Grounds for suspension or cancellation (s16)
  - Insurance (s26)
  - Conflicts of interest (s28, cl 24)
  - Contracts (s31, Reg, Pt 5)
  - Code of Conduct (s32)
  - Grounds for taking disciplinary action (s45); complaints, investigation and audit (s106)
  - Record keeping (cl 48)
  - Supervision required by a condition of registration (Reg, Schedule 1, cl 3).

# Registration – changes

- Change of terminology from 'accreditation' to 'registration'.
- Changes to names of registration classes – comparison table in Schedule 1, clause 4 of BADC Reg.
- Savings and transitional provisions (Schedule 1, clause 3, BADC Act) mean that existing accreditation and conditions will be transferred to the equivalent registration class – apply to renew as usual before expiry date if you just wish to continue working within your existing scope of work.

# Registration – class comparison table

<b>Class of registration</b>	<b>Category of accreditation</b>
building inspector	A4
building surveyor—unrestricted	A1 or A5
building surveyor—restricted (all classes of building)	A2
building surveyor—restricted (class 1 and 10 buildings)	A3
certifier—acoustic	C13
certifier—energy management	C11
certifier—fire safety	C10
certifier—hydraulic (building)	C14
certifier—hydraulic (speciality)	C16
certifier—hydraulic (stormwater)	C15
certifier—location of works	C5
certifier—road and drainage	C1, C2 or C6
certifier—stormwater	C3 or C4
certifier—strata	D1
certifier—subdivision	B1
engineer—electrical	C8
engineer—geotechnical	C12
engineer—mechanical	C9
engineer—structural	C7
swimming pool inspector	E1

# Registration – changes

- There have been changes to the scope of work for some categories, and merging of some categories. Existing certifiers must continue to work within old scope of work unless they apply for a variation after 1 July:
  - Building inspector category will in future be able to inspect class 1 and 10 buildings with performance solutions, under supervision of the principal certifier.
  - A3 equivalent category building surveyor – restricted (class 1 and 10 buildings) work scope now includes:
    - certification of buildings with performance solutions, rather than just DTS
    - certification of pools that have a performance solution for P2.2.4 of the BCA (drainage from swimming pools) but meet all other relevant performance requirements via DTS.
  - C1, C2 and C6 are merged into: certifier – road & drainage.
  - C3 and C4 are merged into: certifier – stormwater.

# Registration – changes

- If you are currently accredited and the scope of the equivalent registration class is broader than the previous category for which you have accreditation:
  - From 1 July, unless you apply for a variation of registration, you must still work within your previous authorisation, regardless of whether your registration class has expanded through merging. This is because the savings and transitional provisions automatically grant you equivalent authorisation. For example, existing A3 certifiers must only certify buildings that achieve compliance with the performance requirements of the BCA by compliance with the DtS provisions of the BCA, as this is what they have been accredited to do before 1 July.
  - Upon first renewal after 1 July, Fair Trading will add conditions to individual registrations, where appropriate, to limit the scope of work to reflect the previous authorisation.
  - To have the condition removed, certifiers will need to apply for a variation of their registration, or put in a new registration application. This means they will need to meet the registration requirements under the new legislation relating to their changed authorisation.

# Registration – changes

- After 1 July, existing 'council accredited certifiers' must continue to work only for councils, to reflect their current accreditation.
- When the first renewal occurs after 1 July 2020, a "council only" condition will be imposed on their registration.
- Council accredited certifiers who want to work privately can apply for a variation of registration and will need to meet the qualification and skills requirements under the new legislation.

# Registered bodies corporate – improved supervision by directors

- A body corporate which is registered to do a certain class of certification work must have at least one director who is registered individually to do that class of work – e.g. a body corporate registered as 'building surveyor-unrestricted' must have a director individually registered in that class. This is to ensure that appropriate supervision can be provided within that corporate structure. See s7(1)(f), s35(1)(h) and s41(1) of the BADC Act.
- Offence for a registered corporation to operate without a suitably registered director: 1,000 penalty units.
- s5A of BP Act just required the director to be accredited – it didn't require the same level of accreditation for the director and the body corporate.
- Transitional provisions in the BADC Act (Schedule 1, cl 13) allows existing registered bodies corporate with insufficient registered directors to apply for an exemption from complying with the director requirements for up to 6 months if they are taking steps to comply with this new requirement.

# Registration of bodies corporate – director/ individual requirements

- If a body corporate ceases to have an appropriately registered director, it must notify Fair Trading within 7 days of becoming aware of this matter.
- The BP Act required the body corporate to have at least one director who is an accredited certifier, and have an additional 2 directors or non-director employees who are individually accredited certifiers. The prescribed number of additional directors or non-director employees no longer exists and has been replaced by a general requirement that any certification work on behalf of the registered body corporate must be done by a 'registered individual' authorised to do that work (s40).

# Registration of bodies corporate – director/ individual notification requirements

- In general, a registered body corporate must notify Fair Trading of the following matters within 7 days of becoming aware of:
  - (i) a registered certifier becoming an employee or registered director of the body corporate, or
  - (ii) a registered certifier ceasing to be an employee or registered director of the body corporate, or
  - (iii) a person becoming a director, or person involved in the management, of the body corporate, or
  - (iv) a person ceasing to be a director, or person involved in the management, of the body corporate.
- This is to allow Fair Trading to ensure that the law is being complied with.

# Registration – changes

- New multi-year registration for 1, 3 or 5 years.
- Some discounts – about 5% saving for 3 year registration and 10% for 5 years.
- Insurance will still be checked annually.

# Registration – timeframe for notice of decision

- The notice of decision timeframe is reduced to 28 days (was 60 days under the BP Act).
- Stop the clock provisions apply for when the Secretary makes a written request for further information from the applicant.

# Registration – changes to improve probity

- Additional criteria for assessing applicant suitability to undertake 'certification work', including assessing the role of 'close associates' of the applicant, and to require further information from third parties.
- This is similar to what occurs under the Home Building Act for licensees under that legislation to promote probity.

# Registration – pending applications

- The transitional provisions in the BADC Act (Schedule 1, clause 4) mean that if an application is made before 1 July 2020 but has yet to be determined by that date, it will be considered an application under the new legislation and will have to comply with the requirements of the BADC legislation.

# Review of administrative decisions

- The bespoke processes for administrative justice in the BP Act are replaced by a requirement to comply with the Administrative Decisions Review Act.
- Regulation of certifiers was previously exempted from this Act, specifically in relation to the provision of reasons and internal review.
- May not be much practical difference – reasons were already provided and internal review was offered.

# Continuing professional development

- Sch.4 of the BADC Regulation requires all certifiers to complete 25 points of CPD per year (6 points for swimming pool inspectors). Activities can either be:
  - approved by the Secretary and given points value in guidelines
  - part of a program offered by a professional body approved by the Secretary in guidelines and given points value by the professional body.
- Secretary has a broad power to exempt or impose additional CPD requirements, and to determine specific compulsory topics.
- There are now specific requirements to keep records of CPD for 5 years, and a general requirement to, if requested, provide evidence of CPD completion.
- There is a transitional arrangement for council certifiers to gradually increase their CPD in line with private certifiers: 15 points in the first year after the commencement of the Regulation and 20 points in the second year.

# Continuing professional development

- CPD guidelines will be published on the Fair Trading website.
- The guidelines list professional associations approved to deliver a CPD program.
- The guidelines categorise types of CPD and limit the CPD points that can be accrued for each type. Types include:
  - structured learning e.g. a formal qualification
  - unstructured learning e.g. a webinar or workshop
  - professional activities e.g. presenting at a conference or training an apprentice
  - private study e.g. reading industry journals.
- The guidelines allow certifiers (except swimming pool inspectors) to carry over up to 10 excess CPD points to the following year. Council certifiers may only carry over points when the transition period ends.

# Education – approval of providers

- There are new general provisions for the Secretary to recognise training.
- Education guidelines will be published in future to cover approved providers of:
  - the certifier short course
  - the swimming pool inspector course.
- Existing approvals will apply during the transitional phase.

# General condition of registration – compliance with practice guide

- S14 of the BADC Act allows a condition on registration so that certification work is conducted in accordance with specific standards or methodologies.
- A Certifier Practice Guide will soon be a prescribed condition of registration for principal certifiers.
- However, the chapters relating to the role of the public interest and conflicts of interest will apply to all certifiers.
- It will be an evolving document and will gradually apply to all certifier classes.
- In the first instance it will assist with proposed Government audits prior to the issue of occupation certificates for residential apartment developments.
- As was the case under the BP Act, breach of a condition of registration under the BADC Act is an offence and carries a maximum penalty of 300 penalty units.

# Insurance – changes to assist with insurance availability

- Insured amounts have been reduced to align with other jurisdictions:
  - One single maximum claim limit of \$1M
  - A maximum indemnity for relevant expenses is 20% of the limit of indemnity for the claim
  - Halved yearly limits for an individual policy:
    - \$1M excluding relevant expenses
    - \$2M including relevant expenses
  - Yearly limits for a body corporate or partnership policy now require the lesser of:
    - indemnity of \$20M, or
    - the yearly limit for an individual multiplied by the number of registered directors and employees
  - Amendments to the definition of 'relevant expenses' to include the legal costs of settling a claim, in addition to defending a claim.

# Insurance – changes to assist with availability

- 'Cladding exclusion' extended to 30 June 2021 (12 month policy has to commence on or before then).
- Slight broadening of the permitted cladding exclusion to reflect market offerings:
  - Additional element: 'c) cladding that is used, installed or applied to a building in a manner that does not comply with the manufacturer's conditions of use of the cladding'
  - Amended the definition of 'cladding' to clarify and include a reference to the 'façade' of any cladding or cladding system.
- New ability for the Secretary to require information from insurers about insurance policies to monitor market.

# Broadened compliance – conflict of interest provisions

- Broader provisions – now apply to all 'certification work'. Previously, the BP Act referred to the issue of Part 4A certificates or CDCs.
- Principles-based approach:
  - that a 'reasonable person' would conclude that a registered certifier has a 'private interest' with respect to certification work; and
  - the private interest is in conflict with the certifier's duty to act in the public interest.

# Broadened compliance – conflict of interest provisions

- The BADC Act has a **non-exclusive** list of examples of private interests:
  - Being the applicant for certification work
  - Having a pecuniary interest in the work
  - Having provided professional services (which are not certification services) for construction or design of the work
  - Having provided professional services for the DA
  - Being a councillor or employee of the council while working as a private certifier
  - Having a family, personal, employment or business relationship with any of the above
- These are broadly similar to the private interests prohibited under the BP Act, except it now operates within a principles-based framework.

# Broadened compliance – conflict of interest provisions

- Exemptions carried over from the BP Act:
  - Minor works on swimming pools
  - Providing advice on whether something complies with the BCA/legislation or approved plans and specs
  - Identifying matters to be satisfied before a certificate can be issued
  - Indicating performance solution required (but not advising on the actual solution)
  - identifying relevant BCA requirements
  - Council certifiers can be involved in DA or CDC assessment
  - Similar provisions for strata certificates
  - Issuing a compliance certificate for own design (or being related to someone who did the design) if not the principal certifier
  - Participating in the fire engineering brief to determine the scope of work for fire engineering analysis

# Broadened compliance – conflict of interest provisions

- The BP Act limited exemptions to the conflict of interest provisions to those relating to having an association with a council.
- The Secretary now has broad power under s28(4) BADC Act to grant an exemption with respect to specified certification work or a class of work, conditionally or without conditions.
- The overriding consideration in granting an exemption is whether the public interest and the principles inherent in the legislation are maintained.
- Applicants for an exemption will need to demonstrate that ss28 and 29 have unintended consequences and there are governance arrangements to ensure the requirement to act in the public interest has been upheld. For example, if a conflict of interest is declared and being actively managed by a Government body with jurisdiction in NSW.

# Broadened compliance – conflict of interest provisions

- Some changes:
  - Certifiers can only provide advice on amending plans for DTS matters for class 1 and 10 buildings, not all classes of buildings.
  - Thresholds for council self-certification or certification for a council employee are reduced from \$5M to \$2M.
  - A private certifier who has a contractual relationship with a council can carry out private work in that LGA, but cannot do both council and private certification work on the same development.

# Broadened compliance – Code of Conduct

- The Code of Conduct is now prescribed in the BADC Regulation. Breach of the Code has a financial penalty (100 units for an individual; 200 units for a corporation – see Reg, Schedule 5, cl 1 (5)) and is also grounds for disciplinary action.
- Many provisions carried over but clarified – new emphasis on maintaining technical and legal knowledge and new provision regarding ensuring the quality of supervision.

# Broadened compliance – Code of Conduct

<b>NEW CODE ITEM</b>	<b>CORRESPONDING BP ACT CODE ITEM</b>
2	1
3	1,4,5
4	9
5 – new item; emphasis on maintaining technical and legal knowledge	
6	10,11, 12, 13
7	2,3
8	6,7
9	7
10	8
11 – new item on supervision	

# Broadened compliance – Code of Conduct – new requirements

## 5 Requirement to maintain satisfactory level of competence

A registered certifier must ensure that the registered certifier remains informed of developments in building design and practice, business management principles, and the law relevant to performing the registered certifier's functions.

## 11 Supervision

A registered certifier must ensure that—

- (a) a person does not carry out certification work under the supervision of the registered certifier unless the registered certifier's registration authorises the supervision, and
- (b) any certification work carried out under supervision is carried out competently.

# Broadened compliance – Code of Conduct – a comparison

## BP Act scheme Code Requirement

6. An accredited certifier shall take all reasonable steps to obtain all relevant facts when making decisions and carrying out certification and other statutory functions.
  
7. An accredited certifier shall ensure that his or her decisions and actions are reasonable, fair and appropriate to the circumstances, based on consideration of all the relevant facts he or she has obtained, and supported by adequate documentation.

# Broadened compliance – Code of Conduct – a comparison

## BADC Regulation Code Requirement

### **8 Requirement to obtain and consider all facts**

- (1) A registered certifier must take all reasonable steps to obtain and document all available facts relevant to the carrying out of certification work.
- (2) A registered certifier must take all reasonable steps to ensure that the decisions and actions of the registered certifier are based on the consideration of all relevant facts that are available to the registered certifier.

### **9 Requirement to document reasons for decisions**

A registered certifier must maintain clearly documented reasons for decisions made when carrying out certification work that set out the following—

- (a) the decision made,
- (b) the reasons for making the decision,
- (c) the findings of fact that the reasons were based upon,
- (d) the evidence for those findings.

# Broadened compliance – contracts

- Compliance with written contract requirements is now a condition of registration.
- Contracts must include a declaration by the person with benefit of the development:
  - confirming they freely chose and are engaging the certifier
  - confirming they have read any document accompanying the contract and understands their roles and responsibilities and those of the certifier.
- From 1 July, the contract must include a prescribed information sheet published by Fair Trading. This outlines the role and responsibilities of certifiers, the role of the person contracting the work, and what information is available on the online register.
- There are different sheets on the Fair Trading website for different types of certification work (e.g. principal certifier appointments; fire safety certification; strata and subdivision, engineers, swimming pool inspections).
- New contract requirements only apply to certifier appointments after 1 July 2020.

# Broadened compliance – certifier notification obligations

- Duty to notify employer of certifier's suspension/cancellation/change in registration now rests with certifiers, not the regulator.
- Act carries over and updates existing provisions from the BP Act for the certifier to notify the Secretary of certain matters within 7 days of becoming aware of them. New matters for notification include:
  - if a certifier is found guilty of a relevant offence (definition streamlined – see s4 of the BADC Act)
  - if a certifier becomes bankrupt or makes a composition, arrangement or assignment for the benefit of the creditors
  - if a body corporate becomes the subject of a winding up order or has a controller or administrator appointed
  - legal or disciplinary proceedings being commenced against the registered certifier in the person's capacity as the holder (or former holder) of a 'relevant authorisation'. This is accreditation as an accredited practitioner (fire safety); architect's registration; holding an authority under the Home Building Act; an authorisation or qualification from another jurisdiction relating to an equivalent of fire safety practitioners and architectural work.

# Broadened compliance – new offence

- CI 9(2) of the Reg requires a certifier to carry their certificate of registration whenever carrying out certification work and produce it if asked by an authorised officer. Breach of this requirement has a maximum penalty of 20 penalty units.
- Certifier must return certificate of registration in event of suspension, cancellation, variation.
  - This aligns with other licensing frameworks administered by Fair Trading (e.g. S66 Home Building Act).

# Broadened compliance – new offences

- S22: new offence in relation to licence lending.
- S43: a person must not, for the purposes of securing work for the person or for any other person, represent that work is work that can be carried out only by a registered certifier unless the work is certification work. Maximum penalty: 300 penalty units.
  - This is to address false representations that a certifier might make to secure work.
- S44: Knowingly issue a false certificate – this offence is broadened to reflect the range of certificates that can be issued to ensure that certifiers are responsible for completing accurate documentation. The previous offence was only for Part 4A/CDCs.

# Data reporting fields updated

- Data reporting by principal certifiers and councils remains an ongoing obligation under the new legislation.
- The requirements are essentially the same with some updating of references (e.g. reporting of a 'direction' which has been issued instead of a 'notice').

# Improved enforcement – broad power to investigate and audit

- S106 of the BADC Act removes the necessity for Fair Trading to receive a complaint before investigating a certifier's conduct.
- The Secretary can investigate 'any other matter that may constitute a breach of this Act or the regulations'. This broad power is new, and can cover people who are not certifiers who breach the BADC Act (e.g. by making representations about certification work and their qualifications). Section 46 of the BP Act only referred to certifiers.
- S106(3) of the BADC Act gives the Secretary broad, explicit powers to audit.

# Disciplinary action – changes

- The Act deletes the terms 'unsatisfactory professional conduct' and 'professional misconduct', and instead provides grounds for taking disciplinary action.
- While the grounds are similar to matters previously covered under the definition of 'unsatisfactory professional conduct', the list is more comprehensive with additional grounds. These include:
  - S45(e): if the certifier has carried out certification work 'in a manner that is not in the public interest'
  - S45(h): if the certifier has breached an undertaking given to the Secretary. An undertaking is a new compliance option under s104 of the BADC Act.

# Disciplinary action – changes

- The BADC Act has a streamlined process:
  - The Secretary issues a show cause notice to the certifier.
  - The certifier is given at least 14 days to respond.
  - The Secretary has broad powers to make further enquiries as a result of the certifier's submissions and then determine the appropriate disciplinary action, if any.
- The Secretary has power to take immediate disciplinary action in the public interest.

# Strengthened enforcement powers

- S50 of the BADC Act has a new provision to immediately suspend a registration until all penalty monies are paid. This provides an additional incentive for payment.
- S51 allows action to be taken against a certifier despite any other action being taken against them, whether criminal or civil, which relates to the same matter.
- S86 provides broad powers for an authorised officer to investigate, monitor and enforce the BADC Act.
  - By contrast, s48 of the BP Act was more limited and focused on evidence gathering for an investigation or purposes connected with Tribunal proceedings.
- Powers to obtain information and require assistance are now more broadly expressed.

# Strengthened enforcement powers

- Record keeping requirements are replicated from the BP Regulation, but now group together records that relate to the same Act. Records must be kept for at least 10 years.
- Offence of obstructing authorised officers (s100) carried over from the existing BP Act. The penalty for obstructing an officer is increased from 50 to 200 penalty units for an individual and 1000 penalty units for a corporation.
- S101 of the BADC Act (failure to comply with a direction from an authorised officer) is similar to s58(2) of the BP Act. However, the penalty for non-compliance is increased from 50 to 200 penalty units for an individual and 1000 penalty units for a corporation.
- The higher penalties are more in line with other Fair Trading legislation (e.g. s23 of Fair Trading Act).
- The BADC Act does not have a provision similar to s59 of the BP Act, which specifically protected a person from self-incrimination.

# Additional enforcement tools

- Warning notices (s103): Secretary may publish a warning notice on the risks of dealing with any persons that they reasonably believe to have breached the Act and/or Regulation.
- Undertakings (s104): Secretary can accept a written undertaking from the certifier after disciplinary action has been taken. The undertaking needs to be recorded on the public certifier register as per cl.66 of the Regulation.
- Injunctions (s105) can now be applied for in the Land and Environment Court to restrain contravention of the BADC Act.

# Enforcement

- S118 provides that s22A(1) of the Fines Act does not apply for any disciplinary offence.
  - i.e. full payment of a penalty notice will not protect the person from further proceedings for the alleged offence.
- S119 extends the period in which action can be taken in the Local Court or Land and Environment Court from two years (section 93 of the BP Act) to three years.
  - This aligns with other Fair Trading legislation, such as the Home Building Act.

# Public certifier register – additional information

- CI 66 now requires the following additional information on the public certifier register:
  - (h) the certifier's registration expiry date
  - (n) any offence against the certification legislation for which the person has been prosecuted, convicted or had a penalty notice issued
  - (o) any failure to comply with a Tribunal or court order to carry out certification work or pay money in relation to certification work
  - (p) any warning notice published under s103 of the Act
  - (q) any undertakings made under section 104 of the Act by the certifier.
- These mainly reflect new disciplinary powers, plus information the Minister committed to as part of a 4 point plan to publish more compliance information about certifiers.

# Accredited practitioners

- The BADC allows for the accreditation of ‘accredited practitioners’ for ‘regulated work’.
- Fire safety is the first type of ‘regulated work’ and is currently done by competent fire safety practitioners, who do the following under the EP&A Regulation:
  - endorse plans and specifications for relevant fire safety systems
  - endorse fire safety performance solution reports
  - endorse exemptions to the BCA for minor works to existing relevant fire safety systems
  - assess ongoing performance of essential fire safety measures and endorse the AFSS.
- Other work can be prescribed as regulated work under the EP&A, BADC or any other Act.
- A co-regulatory model is in place whereby an industry body can apply for Secretary approval as a recognised accreditation authority (and appeal to NCAT if refused).
- The Secretary may e.g. investigate an accreditation authority, require it to engage an independent auditor, and require certain information to be provided. The authority must also publish certain information about its scheme and accredited persons on its website.

# Accredited practitioners (fire safety)

- Accredited practitioners (fire safety) is the new name for competent fire safety practitioners.
- To date, the Government has indicated its intention to approve the accreditation scheme of the Fire Protection Association of Australia (FPAA). Approval will be formalised this July.
- The FPAA accreditation scheme covers:
  - endorsing the design of fire sprinklers, hydrants and hose reels, fire detection and alarm systems, but not mechanical smoke control systems
  - assessing essential fire safety measures for annual fire safety statements.
- From July, the only people considered as accredited practitioners (fire safety) will be:
  - people accredited by the FPAA, but only for the functions covered by the FPAA scheme (for other functions, the certifier or building owner still determines who is competent to carry out the work if individual or collective authorisation has been received from the Commissioner for Fair Trading)
  - certain classes of registered certifier.

# Accredited practitioners (fire safety)

## Classes of registered certifier that can carry out regulated work

- (a) a registered certifier who holds an engineer—electrical (previously C8) class of registration may carry out regulated work comprising the endorsing of plans and specifications for relevant fire safety systems comprising a fire detection and alarm system, and
  - (b) a registered certifier who holds an engineer—mechanical (previously C9) class of registration may carry out regulated work comprising the endorsing of plans and specifications for relevant fire safety systems comprising a mechanically ducted smoke control system, and
  - (c) a registered certifier who holds a certifier—hydraulic (building) (previously C14) class of registration may carry out regulated work comprising the endorsing of plans and specifications for relevant fire safety systems comprising a hydraulic fire safety system.
- A **relevant fire safety system** has the same meaning as in clause 136AA of the Environmental Planning and Assessment Regulation.

# New offences to promote certifier independence from builders – Home Building Act

- A building contract for >\$5K of residential building or specialist work (labour and materials) must now include a prescribed information sheet on the certifier's role (unless the client is a 'developer' as per s3A Home Building Act).
- Maximum penalty for not doing this: 40 penalty units for a corporation; 20 penalty units in any other case.

# New offences to promote certifier independence from builders – Home Building Act

- New offence for a building contractor to attempt to influence their client in their choice of certifier - maximum penalty is 1000 penalty units for a corporation; 300 penalty units in any other case.
- Indicators of attempting to influence a client include:
  - (a) making it a requirement of entering the contract that a specified registered certifier or class of registered certifier was or was not be appointed, or
  - (b) offering to change the contract price if a specified registered certifier or class of registered certifier would be or would not be appointed, or
  - (c) refusing to carry out work under the contract if a specified registered certifier or class of registered certifier is or is not appointed.

# New offences to promote certifier independence from builders – Home Building Act

- Prescribed terms for a building contract where a certifier is needed include:
  - (1) The contractor will notify the owner if a registered certifier is required with respect to particular work done under this contract.
  - (2) The selection of a registered certifier is the sole responsibility of the owner (subject to section 6.6 (4A) or 6.12 (4A) of the Environmental Planning and Assessment Act 1979).
  - (3) The contractor will not object to the selection by the owner of any particular registered certifier.
- Any provision of a building contract which is inconsistent with the legislation is unenforceable (except where health, safety or property is at risk).
- Cl. 8 of the Home Building Regulation requires a contract for >\$20K of work to include a checklist prescribed by Fair Trading. The checklist will in future include an item stating that the contractor cannot object to the client's choice of certifier.